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**PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q68821

Shinichiro ASANO, et al.

Appln. No.: 10/089,678

Group Art Unit: 1653

Confirmation No.: 5542

Examiner: Hope A. Robinson

Filed: April 3, 2002

For: PROTEIN HAVING PESTICIDAL ACTIVITY, DNA ENCODING THE PROTEIN,  
AND NOXIOUS ORGANISM-CONTROLLING AGENT AND METHOD

**SUBMISSION OF EXECUTED STATEMENT OF AVAILABILITY**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find a copy of the executed Statement of Availability, an unexecuted copy of which was filed on September 30, 2004. The Examiner is respectfully requested to acknowledge receipt of this submission.

Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

*Signature of Mark L. Hayman*  
Mark L. Hayman  
Registration No. 51,793

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: October 7, 2004



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ASANO, SHINICHIRO et al.

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STATEMENT OF AVAILABILITY

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

We, SDS BIOTECH K.K. of 5-6, Shiba 2-chome, Minato-ku, Tokyo 105-0014, Japan, do  
depose, declare and state that:

We are the Assignee of the entire right, title and interest of the invention described and  
claimed in the above-identified application, as evidenced by the Assignment recorded on April 3,  
2002, at REEL 013042, FRAME 0235.

We agree that upon allowance and issuance of the above-identified application into a  
United States Patent, restriction on availability of:

***Bacillus thuringiensis serovar galleriae* SDS502 strain, assigned FERM BP-7667**

which is designated in the specification of the above-identified application and was deposited  
under the terms of the Budapest Treaty at the National Institute of Advanced Industrial Science

and Technology, Independent Administrative Institution at AIST Tsukuba Central 6, 1-1,  
Higashi 1-Chome Tsukuba-shi, Ibaraki-ken, 305-8566 Japan, will be irrevocably removed.

We agree that the above-identified cell line designated in the above-identified application will be maintained for a period of 30 years or 5 years after the last request for the deposit or for the effective life of any patent which issues on the above-identified application, whichever is longer;

We agree that if the deposit becomes non-viable, it will be replaced; and

We also assure access to the deposit to one determined by the Commissioner to be entitled thereto under 37 C.F.R. § 1.14 and 35 U.S.C. § 122.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

SDS BIOTECH K.K.

Date: October 4, 2004

Name: 

Name: Takashi Shirai

Title: President & Representative Director